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HOUSE BILL NO. 2089

Offered January 10, 2007

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A BILL to amend and reenact §§ 16.1-69.9:3, 16.1-69.22:1, 16.1-69.30, 16.1-69.35, 17.1-105, 17.1-106, 17.1-107, 17.1-300, 17.1-315, 17.1-501, 17.1-507, 17.1-511, 19.2-6, 19.2-153, and 19.2-154 of the Code of Virginia, relating to powers and duties of the Supreme Court of Virginia.

Patron—Janis

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.9:3, 16.1-69.22:1, 16.1-69.30, 16.1-69.35, 17.1-105, 17.1-106, 17.1-107, 17.1-300, 17.1-315, 17.1-501, 17.1-507, 17.1-511, 19.2-6, 19.2-153, and 19.2-154 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-69.9:3. Investigation and certification of necessity before vacancies filled.

When a vacancy occurs in the office of any judge of any district, ~~the vacancy shall not be filled until, after investigation,~~ the Committee on District Courts certifies that the filling of the vacancy is necessary. The Committee shall publish notice *within 10 days* of such certification vacancy in a publication of general circulation among attorneys licensed to practice in the Commonwealth. No notice of retirement submitted under § 51.1-305 or § 51.1-307 shall be revoked after certification notice of the vacancy by the Committee. If the Committee certifies that the filling of the vacancy is not necessary, it shall direct the manner of distributing the work created by the vacancy, and the vacancy shall not be filled if not certified as necessary ~~has been published~~. A vacancy shall be deemed to have occurred upon the death, resignation, removal from office, or submission of a retirement notice by any district court judge.

§ 16.1-69.22:1. Temporary recall of retired district court judges.

A. The Chief Justice of the Supreme Court ~~chief circuit court judge~~ may call upon and authorize any judge of a district court who is retired under the Judicial Retirement System (§ 51.1-300 et seq.) to perform, for a period not to exceed ninety days at any one time, such judicial duties in any district court as the Chief Justice of the Supreme Court shall deem in the public interest for the expeditious disposition of the business of such courts *within the chief judge's circuit*.

B. It shall be the obligation of any retired judge who is recalled to temporary service under this section and who has not attained age seventy to accept the recall and perform the duties assigned. It shall be within the discretion of any judge who has attained age seventy to accept such recall.

C. Any judge recalled to duty under this section shall have all the powers, duties, and privileges attendant on the position he is recalled to serve.

§ 16.1-69.30. District system within unified court system.

The district court system shall be within the unified court system of the Commonwealth subordinate to the Supreme Court and subject to the administrative supervision of the ~~Chief Justice~~ Executive Secretary of the Supreme Court.

§ 16.1-69.35. Administrative duties of chief district judge.

The chief judge of each district shall have the following administrative duties and authority with respect to his district:

1. When any district court judge is under any disability or for any other cause is unable to hold court and the chief judge determines that assistance is needed:

a. The chief district judge shall designate a judge within the district or a judge of another district court within the Commonwealth, if one is reasonably available, to hear and dispose of any action or actions properly coming before such district court for disposition;

b. If unable to designate a judge as provided in subdivision 1 a, the chief district judge may designate a retired district judge for such hearing and disposition if such judge consents; or

c. If unable to assign a retired district court judge, the chief district judge may designate a retired circuit court judge if such judge consents or the chief district judge may request that the Chief Justice of the Supreme Court designate a circuit judge if such judge consents.

If no judges are available under subdivision a, b or c, then a substitute judge shall be designated pursuant to § 16.1-69.21.

While acting, any judge so designated shall have all the authority and power of the judge of the court, and his order or judgment shall, to all intents and purposes, be the judgment of the court. A general district court judge designated pursuant to subdivision 1 a, may, with his consent, substitute for

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59 or replace a juvenile and domestic relations district court judge, and vice versa. The names of the judges
60 designated under subdivisions b and c shall be selected from a list provided by the Executive Secretary
61 and approved by the Chief Justice of the Supreme Court.

62 2. The chief general district court judge of a district may designate any juvenile and domestic
63 relations district court judge of the district, with the judge's consent, for an individual case or to sit and
64 hear cases for a period of not more than one year, in any of the general district courts within the
65 district. The chief juvenile and domestic relations district court judge of a district may designate any
66 general district court judge of the district, with the judge's consent, for an individual case or to sit and
67 hear cases for a period of not more than one year, in any of the juvenile and domestic relations district
68 courts within the district. Every judge so designated shall have the same powers and jurisdiction and be
69 authorized to perform the same duties as any judge of the district for which he is designated to assist,
70 and, while so acting, his order or judgment shall be, for all purposes, the judgment of the court to which
71 he is assigned.

72 3. If on account of congestion in the work of any district court ~~or when in his opinion the~~
73 ~~administration of justice so requires,~~ the Chief Justice of the Supreme Court may, ~~upon his own~~
74 ~~initiative or~~ upon written application of the chief district court judge desiring assistance, designate a
75 judge from another district or any circuit court judge, if such circuit court judge consents, or a retired
76 judge to provide judicial assistance to such district. Every judge so designated shall have the same
77 powers and jurisdiction and be authorized to perform the same duties as any judge of the district for
78 which he is designated to assist and while so acting his order or judgment shall be, to all intents and
79 purposes, the judgment of the court to which he is assigned.

80 4. Subject to such rules as may be established pursuant to § 16.1-69.32, the chief judge may establish
81 special divisions of any general district court when the work of the court may be more efficiently
82 handled thereby such as through the establishment of special civil, criminal or traffic divisions, and he
83 may assign the judges of the general district court with respect to serving such special divisions. In the
84 City of Richmond the general district court shall, in addition to any specialized divisions, maintain a
85 separate division of such court in that part of Richmond south of the James River with concurrent
86 jurisdiction in civil matters whenever one or more of the defendants reside or the cause of action or any
87 part thereof arises in that part of the city, concurrent jurisdiction over all traffic matters arising in that
88 part of the city and exclusive jurisdiction over all other criminal matters arising in that part of the city.

89 5. Subject to such rules as may be established pursuant to § 16.1-69.32, the chief judge shall
90 determine when the district courts or divisions of such courts shall be open for the transaction of
91 business. The chief judge or presiding judge of any district court may authorize the clerk's office to
92 close on any date when the chief judge or presiding judge determines that operation of the clerk's office,
93 under prevailing conditions, would constitute a threat to the health or safety of the clerk's office
94 personnel or the general public. Closing of the clerk's office pursuant to this subsection shall have the
95 same effect as provided in subsection B of § 1-210. In determining whether to close because of a threat
96 to the health or safety of the general public, the chief judge or the presiding judge of the district court
97 shall coordinate with the chief judge or presiding judge of the circuit court so that, where possible and
98 appropriate, both the circuit and district courts take the same action. He shall determine the times each
99 such court shall be held for the trial of civil, criminal or traffic matters and cases. He shall determine
100 whether, in the case of district courts in counties, court shall be held at any place or places in addition
101 to the county seat. He shall determine the office hours and arrange a vacation schedule of the judges
102 within his district, in order to ensure the availability of a judge or judges to the public at normal times
103 of business. A schedule of the times and places at which court is held shall be filed with the Executive
104 Secretary of the Supreme Court and kept posted at the courthouse, and in any county also at any such
105 other place or places where court may be held, and the clerk shall make such schedules available to the
106 public upon request. Any matter may, in the discretion of the judge, or by direction of the chief district
107 judge, be removed from any one of such designated places to another, or to or from the county seat, in
108 order to serve the convenience of the parties or to expedite the administration of justice; however, any
109 town having a population of over 15,000 as of July 1, 1972, having court facilities and a court with
110 both general criminal and civil jurisdiction prior to July 1, 1972, shall be designated by the chief judge
111 as a place to hold court.

112 6. Subject to the provisions of § 16.1-69.38, the chief judge of a general district court or the chief
113 judge of a juvenile and domestic relations district court may establish a voluntary civil mediation
114 program for the alternate resolution of disputes. The costs of the program shall be paid by the local
115 governing bodies within the district or by the parties who voluntarily participate in the program.

116 § 17.1-105. Designation of judges to hold courts and assist other judges.

117 A. If a judge of any court of record is absent, sick or disabled or for any other reason unable to hold
118 any regular or special term of the court, or any part thereof, or to perform or discharge any official duty
119 or function authorized or required by law, a judge or retired judge of any court of record may be
120 obtained by personal request of the disabled judge, or another judge of the circuit to hold the court for

the whole or any part of such regular or special term and to discharge during vacation such duty or function, or, if the circumstances require, to perform all the duties and exercise all the powers and jurisdiction as judges of such circuit until the judge is again able to attend his duties. The designation of such judge shall be entered in the civil order book of the court, and a copy thereof sent to the Chief Justice of the Supreme Court. The Chief Justice Supreme Court shall be notified forthwith at the time any disabled judge is able to return to his duties.

B. If all the judges of any court of record are so situated in respect to any case, civil or criminal, pending in their court as to render it improper, in their opinion, for them to preside at the trial, unless the cause or proceeding is removed, as provided by law, they shall enter the fact of record and the clerk of the court shall at once certify the same to the Chief Justice of the Supreme Court, ~~who~~ which shall designate a judge of some other court of record or a retired judge of any such court to preside at the trial of such case.

C. If a vacancy occurs in the office of a judge of a court of record that fact shall be immediately certified by the clerk of such court to the Governor, who may, instead of appointing a successor at once, request the Chief Justice Supreme Court to designate a judge of some other court of record or a retired judge of any such court to carry out the duties of the office, if there are insufficient judges in the circuit to carry out the work of the court, until the office has been filled in the mode prescribed by law. If any judge so designated shall be prevented by the duties of his court, or by sickness, from performing the duties required, he shall so inform the Chief Justice Supreme Court, ~~who~~ which may designate another judge in his place.

D. Due to congestion in the work of any court of record or when in ~~his~~its opinion the administration of justice so requires, the Chief Justice Supreme Court may, ~~upon his own initiative or~~ upon application of the judge desiring assistance, designate a judge or retired judge of any court of record to assist the judge in the performance of his duties and every judge so designated shall have the same powers and jurisdiction and be authorized to perform the same duties as the judge whom he is designated to assist.

E. Any judge or retired judge sitting under any provision of this section or sitting by designation on any three-judge court shall receive from the state treasury actual expenses for the time he is actually engaged in holding court, except in those cases where the payment of such expenses is otherwise specifically provided by law.

F. The powers and duties herein conferred and imposed upon the Chief Justice Supreme Court ~~may~~ shall be exercised and performed by ~~any justice, or any committee of a majority of the justices, of the Court, designated by the Chief Justice for such purpose.~~

G. If the chief judge of any circuit is unable to perform the duties required by law, he shall notify the Chief Justice Supreme Court, ~~who~~ which shall designate another judge of the same circuit to perform such duties.

H. If any judge refuses unreasonably to serve as requested under the provisions of this section, the chief judge may report his refusal to the Judicial Inquiry and Review Commission.

§ 17.1-106. Temporary recall of retired judges.

A. The Chief Justice of the Supreme Court may call upon and authorize any justice or judge of a court of record who is retired under the Judicial Retirement System (§ 51.1-300 et seq.) or who is retired under the Virginia Retirement System following transfer from the Judicial Retirement System under the provisions of subsection C of § 51.1-303 either to (i) hear a specific case or cases pursuant to the provisions of § 17.1-105 such designation to continue in effect for the duration of the case or cases or (ii) perform for a period of time not to exceed ninety days at any one time, such judicial duties in any court of record as the Chief Justice Court shall deem in the public interest for the expeditious disposition of the business of the courts of record.

B. It shall be the obligation of any retired judge or justice who is recalled to temporary service under this section and who has not attained age seventy to accept the recall and perform the duties assigned. It shall be within the discretion of any justice or judge who has attained age seventy to accept such recall.

C. Any justice or judge recalled to duty under this section shall have all the powers, duties, and privileges attendant on the position he is recalled to serve.

D. A retired justice of the Supreme Court or judge of the Court of Appeals recalled to active service shall be furnished an office, office supplies, and stenographer while performing such active service.

E. *The powers and duties herein conferred and imposed upon the Supreme Court shall be exercised and performed by a majority of the justices of the Court.*

§ 17.1-107. Designation of judge to assist regular judge holding case under advisement for unreasonable length of time.

A. Whenever the Chief Justice of the Supreme Court, ~~or any justice designated by him,~~ has reasonable cause to believe that any judge of a court of record may be holding one or more civil cases under advisement for an unreasonable length of time, ~~he~~ the Court shall inquire into the cause of such delay, and if ~~he~~ finds it found necessary, in order to expedite the administration of justice, ~~he~~ the Court

182 shall designate a judge or retired judge of a court of record to assist the regular judge in the
183 performance of his duties.

184 B. Complaints made hereunder shall be absolutely privileged and the name of the complainant shall
185 not be disclosed without his consent.

186 § 17.1-300. Composition of Court; quorum; Chief Justice.

187 The Supreme Court shall consist of seven justices, any four of whom convened shall constitute a
188 quorum. ~~The Chief Justice shall be elected by majority vote of the justices of the Supreme Court to~~
189 ~~serve a term of four years. The justice longest in continuous service shall be Chief Justice, and if two or~~
190 ~~more shall have so served for the same period, the justice senior in years of those shall be Chief~~
191 ~~Justice.~~ An eligible justice may decline to serve as Chief Justice, or a Chief Justice may resign as such,
192 without thereby relinquishing his membership on the Court as a justice thereof. *In either event the Chief*
193 *Justice shall be the justice who would next succeed to the office.*

194 § 17.1-315. Duties of Executive Secretary.

195 The Executive Secretary to the Supreme Court shall have the following duties:

196 1. He shall be the Secretary of the Judicial Council;

197 2. He shall be the Secretary of the Judicial Conference;

198 3. He shall assist the ~~Chief Justice and the~~ Supreme Court in the administration of the judicial branch
199 of the government to the end that litigation may be expedited and the administration of justice improved
200 in the courts of the Commonwealth; and

201 4. He shall have such other duties as may be required of him ~~by the Chief Justice or~~ by the Supreme
202 Court in the performance of the administrative functions of that Court.

203 § 17.1-501. Judges of circuit courts; selection, powers and duties of chief judges; exercise of
204 appointive powers.

205 A. There shall be as many judges of the circuit courts as may be fixed by the General Assembly.
206 The judges of each circuit shall select from their number by majority vote a chief judge of the circuit,
207 who shall serve for the term of two years. ~~In the event such judges cannot agree as to who shall be~~
208 ~~chief judge, the Chief Justice of the Supreme Court shall act as tie breaker.~~

209 B. The chief judge of the circuit shall ensure that the system of justice in his circuit operates
210 smoothly and efficiently. He shall have authority to assign the work of the circuit among the judges, and
211 in doing so he may consider the nature and categories of the cases to be assigned.

212 C. Unless otherwise provided by law, powers of appointment within a circuit shall be exercised by a
213 majority of the judges of the circuit; however, the order of appointment may be signed by the chief
214 judge or that judge's designee on behalf of the other judges. ~~In case of a tie, the Chief Justice of the~~
215 ~~Supreme Court shall appoint a circuit judge from another circuit who shall act as tie breaker.~~ Where the
216 power of appointment is to be exercised by a majority of the judges of the Second Judicial Circuit and
217 such appointment is to a local post, board or commission in Accomack or Northampton County, the
218 resident judge or judges of the County of Accomack or Northampton shall exercise such appointment
219 power as if he or they comprise the majority of the judges of the circuit.

220 D. No person shall be appointed or reappointed under this section until he has submitted his
221 fingerprints to be used for the conduct of a national criminal records search and a Virginia criminal
222 history records search. No person with a criminal conviction for a felony shall be appointed as a judge.

223 § 17.1-507. Number of judges; residence requirement; compensation; powers; etc.

224 A. For the several judicial circuits there shall be judges, the number as hereinafter set forth, who
225 shall during their service reside within their respective circuits and whose compensation and powers
226 shall be the same as now and hereafter prescribed for circuit judges.

227 The number of judges of the circuits shall be as follows:

228 First - 5

229 Second - 10

230 Third - 5

231 Fourth - 9

232 Fifth - 3

233 Sixth - 2

234 Seventh - 5

235 Eighth - 4

236 Ninth - 4

237 Tenth - 3

238 Eleventh - 3

239 Twelfth - 5

240 Thirteenth - 8

241 Fourteenth - 5

242 Fifteenth - 8

243 Sixteenth - 5

Seventeenth - 4
 Eighteenth - 3
 Nineteenth - 15
 Twentieth - 4
 Twenty-first - 3
 Twenty-second - 4
 Twenty-third - 6
 Twenty-fourth - 5
 Twenty-fifth - 4
 Twenty-sixth - 5
 Twenty-seventh - 5
 Twenty-eighth - 3
 Twenty-ninth - 4
 Thirtieth - 3
 Thirty-first - 5

B. No additional circuit court judge shall be authorized or provided for any judicial circuit until the Judicial Council has made a study of the need for such additional circuit court judge and has reported its findings and recommendations to the Courts of Justice Committees of the House of Delegates and Senate. The boundary of any judicial circuit shall not be changed until a study has been made by the Judicial Council and a report of its findings and recommendations made to said Committees.

C. If the Judicial Council finds the need for an additional circuit court judge after a study is made pursuant to subsection B, the study shall be made available to the Compensation Board and the Courts of Justice Committees of the House of Delegates and Senate and Council shall publish notice of such finding in a publication of general circulation among attorneys licensed to practice in the Commonwealth. The Compensation Board shall make a study of the need to provide additional courtroom security and deputy court clerk staffing. This study shall be reported to the Courts of Justice Committees of the House of Delegates and the Senate, and to the Department of Planning and Budget.

§ 17.1-511. Investigation and certification of necessity before vacancies filled.

When a vacancy occurs in the office of judge of any court of record, the vacancy shall not be filled until, after investigation, the Supreme Court certifies that the filling of the vacancy is or is not necessary. If the Court certifies that the filling of the vacancy is necessary, the Court shall publish notice of such certification vacancy in a publication of general circulation among attorneys licensed to practice in the Commonwealth. No notice of retirement submitted under § 51.1-305 or § 51.1-307 shall be revoked after certification of the vacancy by the Court. If the Court certifies that the filling of the vacancy is not necessary, it shall recommend to the General Assembly the manner of distributing the work of the judge; and the Governor shall not fill the vacancy. A vacancy shall be deemed to have occurred upon the death, resignation, removal from office, or submission of a retirement notice by any judge of a court of record.

§ 19.2-6. Appointive power of circuit courts.

Unless otherwise specifically provided, whenever an appointive power is given to the judge of a circuit court, that power shall be exercised by a majority of the judges of the circuit. In case of a tie, such fact shall be communicated to the Chief Justice of the Supreme Court, who shall appoint a circuit judge from another circuit who shall act as a tie breaker. Where the power of appointment is to be exercised by a majority of the judges of the Second Judicial Circuit and such appointment is to a local post, board or commission in Accomack or Northampton County, the resident judge or judges of the County of Accomack or Northampton shall exercise such appointment power as if he or they comprise the majority of the judges of the Circuit.

§ 19.2-153. When judge cannot sit on trial; how another judge procured to try the case.

When the judge of a circuit court in which a prosecution is pending is connected with the accused or party injured, or is so situated in respect to the case as in his opinion to render it improper that he should preside at the trial, or if he has rejected a plea bargain agreement submitted by both parties and the parties do not agree that he may hear the case, he shall enter the fact of record and the clerk of the court shall at once certify this fact to the Chief Justice of the Supreme Court and thereupon another judge shall be appointed, in the manner prescribed by § 17.1-105, to preside at the trial.

§ 19.2-154. Death or disability of judge during trial; how another judge procured to continue with trial.

If by reason of death, sickness or other disability the judge who presided at a criminal jury trial is unable to proceed with and finish the trial, another judge of that court or a judge designated by the Chief Justice of the Supreme Court or by a justice designated by him for that purpose, may proceed with and finish the trial or, in his discretion, may grant and preside at a new trial. If by reason of such disability, the judge who presided at any trial is unable to perform the duties to be performed by the

305 court after a finding of guilty by the jury or the court, another judge of that court, or a judge designated
306 as provided in the preceding sentence, may perform those duties or, in his discretion, may grant and
307 preside at a new trial. Before proceeding with the trial or performing such duties, such judge shall
308 certify that he has familiarized himself with the record of the trial.